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No. 410

In the Supreme Court of the United States

October Term, 1957

MOLLY G. BESS, PETITIONER

v.

UNITED STATES OF AMERICA

On Cross-Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

MEMORANDUM FOR THE UNITED STATES

J. LEE RANKIN,
Solicitor General,
Department of Justice,
Washington 25, D.C.

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MEMORANDUM FOR THE UNITED STATES

The issue presented by the cross-petition is whether the beneficiary of life insurance policies of a decedent who retained, during his life, the right to draw cash surrender values and the right to change the beneficiary, and who died insolvent while owing delinquent income taxes to the Government, is liable as a transferee to the extent of the cash surrender values. Petitioner correctly states that as to this issue the decision of the Court of Appeals for the Third Circuit in the instant case is in direct conflict with the decision of the Court of Appeals for the Sixth Circuit in the case of *Stern* v. *Commissioner*, 242 F. 2d 322, and that the Government has petitioned for a writ

of certiorari in the *Stern* case (No. 311, this Term), asserting the conflict.

The Government's petition in the instant case, No. 395, filed August 22, 1957, raises the issue of the beneficiary's liability, in these same circumstances, to the full extent of the proceeds of the insurance policies. The two issues are closely related and, we submit, should be heard together by this Court. Accordingly, although we believe that the decision below, insofar as it upholds the Commissioner, is correct, the Government does not oppose the cross-petition for a writ of certiorari.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General

September, 1957.

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